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No. 85-1167

# In the Supreme Court of the United States

OCTOBER TERM, 1985

MAYOR'S OFFICE OF EMPLOYMENT AND TRAINING, CITY OF CHICAGO, AND CITY OF CHICAGO, PETITIONERS

*v.*

UNITED STATES DEPARTMENT OF LABOR

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT*

## BRIEF FOR THE RESPONDENT

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## QUESTION PRESENTED

Whether Section 106(b) of the Comprehensive Employment and Training Act of 1973, 29 U.S.C. (Supp. V 1981) 816(b), which stated that the Secretary of Labor "shall" issue a final determination within 120 days of the receipt of a complaint alleging the unlawful use of CETA funds by a grant recipient, barred the Secretary from recovering misused grant funds when he failed to issue a final determination within the 120-day period.

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## BRIEF FOR THE RESPONDENT

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### OPINIONS BELOW

The opinion of the court of appeals (Pet. App. a1-a12) is reported at 775 F.2d 196. The orders of the administrative law judge (Pet. App. b1, c1, d1, e1-e2) are unreported.

### JURISDICTION

The judgment of the court of appeals was entered on October 17, 1985. The petition for a writ of certiorari was filed on January 8, 1986. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

### STATEMENT

1. The Comprehensive Employment and Training Act of 1973 (CETA), 29 U.S.C. (Supp. V 1981) 801 *et seq.*, authorized the Secretary of Labor to grant federal funds to qualified entities, such as states and local government units, for

programs "provid[ing] job training and employment opportunities for economically disadvantaged, unemployed, or underemployed persons." 29 U.S.C. (Supp. V 1981) 801; see also S. Rep. 95-891, 95th Cong., 2d Sess. 4, 42-43 (1978); H.R. Rep. 93-659, 93d Cong., 1st Sess. 1-3 (1973).[1] The statutory scheme was carefully constructed to ensure that programs financed with CETA funds would further the purposes of the Act. Thus, the statute prescribed detailed eligibility standards for participants in CETA programs and set forth the terms and conditions governing the employment of such program participants. See 29 U.S.C. (Supp. V 1981) 823-827; see also 20 C.F.R. 675.5, 676.21 to 676.30a, 676.51 to 676.76. Each grant recipient was required to submit assurances that its program would comply with all applicable statutory and regulatory requirements (29 U.S.C. (Supp. V 1981) 813(a)(21)).

The statute stated that the Secretary of Labor could conduct audits of grant recipients "[i]n order to assure that funds provided under [the CETA] are used in accordance with its provisions" (29 U.S.C. (Supp. V 1981) 835(a)).[2] In

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[1]The statute originally was enacted in 1973 (Pub. L. No. 93-203, 87 Stat. 839 *et seq.*) and was amended substantially in 1978 (Pub. L. No. 95-524, 92 Stat. 1909 *et seq.*). The CETA was repealed effective October 13, 1982, and replaced by the Job Training Partnership Act, 29 U.S.C. 1501 *et seq.* (see Pub. L. No. 97-300, § 184(a)(1), 96 Stat. 1357). However, the CETA continues to govern administrative or judicial proceedings pending on September 30, 1984 (29 U.S.C. 1591(e)).

[2]Typically, an audit was performed or arranged by the Department of Labor's Office of Inspector General and the audit report was forwarded to the Department of Labor grant officer responsible for the particular grant. The grant officer provided the grant recipient with an opportunity to comment on the report, issued an initial determination, offered to attempt informally to resolve the dispute, and then issued a final determination. 20 C.F.R. 676.86(d), 676.88. The grant recipient was entitled to a hearing before an administrative law judge (ALJ) with respect to the grant officer's final determination. The ALJ then rendered a decision that, if not modified or vacated within 30 days, became

addition, the statute permitted any interested person, such as a program participant, to file a complaint with the Secretary alleging that a grant recipient had failed to comply with CETA standards (29 U.S.C. (Supp. V 1981) 816).

Section 106(b) of the Act, 29 U.S.C. (Supp. V 1981) 816(b), stated that if the Secretary obtained information—either as the result of an audit or through the receipt of a complaint—concerning a grant recipient's failure to adhere to the Act's requirements, the Secretary was required to investigate the matter. The same provision then stated that "not later than 120 days after receiving the complaint," the Secretary "shall" make a "final determination" regarding the allegation involved (*ibid.*). If after notice to the grant recipient and an opportunity for a hearing, the Secretary found that the grant recipient violated the CETA's requirements, the Secretary expressly was authorized to order the grant recipient to repay any misspent funds to the United States. 29 U.S.C. (Supp. V 1981) 816(b) and (d).

2. a. Petitioner City of Chicago received over $172 million in CETA grants from the federal government (Pet. App. a2, a4). On April 30, 1982, the Labor Department official who administered petitioners' grants received an audit report concerning $152 million in grants received by petitioners (*id.* at a2). The grant officer issued a final determination on October 29, 1982, six months after his receipt of the audit report, disallowing approximately $13.3 million in costs claimed by petitioners (*id.* at a2-a4 & n.1). Petitioners sought review of the grant officer's determination before an administrative law judge (ALJ). During the proceedings before the ALJ, the parties stipulated that petitioners could not justify expenditures of $3.6 million in

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the final decision of the Secretary. A decision adverse to the grant recipient or another interested person was subject to judicial review in a court of appeals. 29 U.S.C. (Supp. V 1981) 816(b), 817(a); 20 C.F.R. 676.88 to 676.92.

CETA funds (*id.* at a4, c1). Petitioners moved to dismiss the final determination, however, arguing that the length of time between the grant officer's receipt of the audit report and his issuance of the final determination barred a repayment order because the final determination was not issued within the 120-day period set forth in Section 106(b). The ALJ denied the motion, and petitioners were required to repay the misspent CETA funds (*id.* at a4, c1).

b. In January 1976, Department of Labor auditors filed an audit report with petitioners' grant officer questioning petitioners' expenditures in connection with $20 million in CETA grants received by petitioners (Pet. App. a4). The grant officer issued a final determination on May 11, 1981, more than five years after his receipt of the audit report (but two and one-half years after Section 106(b) was enacted), disallowing expenditures of approximately $18,000 (*id.* at a4). Petitioners sought review of the grant officer's determination by an ALJ, but did not present any evidence contesting the disallowances (*id.* at e2). The ALJ again denied petitioners' motion to dismiss based on the untimeliness of the grant officer's final determination, and petitioners again were directed to repay these funds to the United States (*id.* at a4-a5, d1).

The orders of the administrative law judge in each case became the final decision of the Secretary (see 29 C.F.R. 676.91(f)), and petitioners sought judicial review in the court of appeals pursuant to 29 U.S.C. (Supp. V 1981) 817.

3. The court of appeals unanimously affirmed, holding that the Secretary's failure to issue a final determination within the 120-day period set forth in Section 106(b) did not bar the Secretary from recovering misused CETA funds (Pet. App. a1-a12).[3] The court stated that the legislative

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[3]Petitioners did not dispute in the court of appeals that they misused CETA funds in the amounts found by the ALJ.

history of the CETA "demonstrates that Congress did not intend for the 120-day time period to act as a jurisdictional bar" (*id.* at a5). The court found that Congress enacted the 1978 CETA amendments—which included Section 106(b)—because of its "concern[] with the reported fraud and waste and suspected abuses in the CETA program" (Pet. App. a5-a6). It concluded that "since Congress was well-aware at this time of the already burdensome workload facing the Secretary that was caused by [a] shortage of personnel and was cognizant that it would be adding to this burdensome workload by increasing his responsibility * * * to detect and remedy abuses in the CETA program, it would be illogical for Congress * * * at the same time [to] impose a jurisdictional bar against the recovery of misappropriated funds by the Secretary only 120 days after reception of the complaint" (*id.* at a6). The court further noted that the sponsor of the House floor amendment that became Section 106(b) expressly declared that the provision was not intended to limit the Secretary's jurisdiction (Pet. App. a6-a8). Finally, the court observed that its interpretation of Section 106(b) was supported by "[t]he well-recognized rule * * * that a statutory time period does not erect a jurisdictional bar to actions taken subsequent to that period unless the statute also specifies the sanction for failing to comply with the deadline" (Pet. App. a11).

## ARGUMENT

The question presented in this case is the same as the issue now before the Court in *Brock* v. *Pierce County*, cert. granted, No. 85-385 (Nov. 4, 1985); *i.e.*, whether Section 106(b) of the 1978 CETA bars the Secretary of Labor from recovering misspent CETA funds when he fails to issue a final determination within 120 days.[4] Here, the court of

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[4]We have served petitioners' counsel with a copy of our brief in *Brock* v. *Pierce County*.

appeals upheld a decision of the Secretary directing the repayment to the United States of misspent CETA funds despite the fact that the Secretary did not issue a final determination within 120 days. We demonstrated in our brief in *Pierce County* (at 11-32) that this interpretation of Section 106(b) is correct because it accords with a settled rule of statutory construction as well as the explicit legislative history and purposes of the CETA.[5]

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[5]Petitioners argue (Pet. 12-13) that a different rule should apply in this case because the funds were misspent by petitioners' subgrantees. However, Section 106(b) does not by its terms distinguish between allegations that funds were misspent by a grantee and claims that the funds were misspent by a subgrantee. Indeed, another subsection of this provision of the statute—Section 106(k), 29 U.S.C. (Supp. V 1981) 816(k)—provides that "[n]othing in this section shall be deemed to reduce the responsibility and full liability of the prime sponsors and other recipients which receive funds directly from the Secretary." Thus, there is no basis for petitioners' claim that Section 106(b) should be applied to immunize the recipient of a CETA grant from liability for the misuse of funds by its subgrantees. Cf. *North Carolina Commission of Indian Affairs* v. *United States Department of Labor*, 725 F.2d 238, 242 (4th Cir. 1984), cert. denied, No. 83-1981 (Oct. 1, 1984) (recipient of CETA funds is responsible for improper expenditures by subgrantees).

## CONCLUSION

The Court should hold the petition for a writ of certiorari and dispose of it as appropriate in light of the decision in *Brock* v. *Pierce County*.

Respectfully submitted.

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